

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

## UNITED STATES DISTRICT COURT

for the

Western District of New York



Buffalo Division

JOHNNY CALIXTE-JAMES

Case No.

24CV211-JLS

(to be filled in by the Clerk's Office)

## Plaintiff(s)

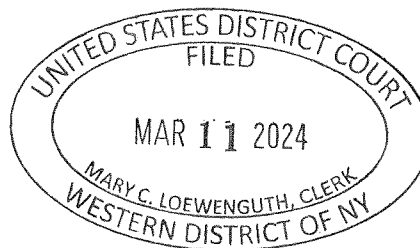
(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Hon. Judge Caroline A. Wojtaszek, Carrington Crossley ADA, Niagara County District Attorney's Office, Niagara County Sheriff's Office Drug Task Force, Brian D. Seaman, and All Known and Unknown Law Enforcement

## Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial: (check one) ☐ Yes ☒ No

## COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

## NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Johnny Calixte-James		
Address	c/o 2201 pine ave side apt		
	Niagara Falls	NY	14303
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	niagara		
Telephone Number	585-407-7778		
E-Mail Address	galaxstar777@gmail.com		

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

**Defendant No. 1**

Name	Hon Judge Caroline A. Wojtaszek		
Job or Title <i>(if known)</i>	County Judge		
Address	175 hawley st		
	lockport	NY	14094
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Niagara		
Telephone Number	716-280-6409		
E-Mail Address <i>(if known)</i>			
<input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity			

**Defendant No. 2**

Name	Carrington Crossley		
Job or Title <i>(if known)</i>	Assistant District Attorney		
Address	175 hawley st		
	lockport	NY	14094
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Niagara		
Telephone Number	716-439-7000		
E-Mail Address <i>(if known)</i>			
<input type="checkbox"/> Individual capacity <input checked="" type="checkbox"/> Official capacity			

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

## Defendant No. 3

Name Niagara County Sheriff's Office Drug Task Force

Job or Title (if known) All Known and Unknown Law Enforcement

Address 5526 niagara st ext

lockport NY 14094

*City State Zip Code*

County Niagara

Telephone Number 716-438-3393

E-Mail Address (if known) \_\_\_\_\_

☐ Individual capacity ☒ Official capacity

## Defendant No. 4

Name Brian D. Seaman

Job or Title (if known) Niagara County District Attorney

Address 175 hawley st

lockport NY 14094

*City State Zip Code*

County Niagara

Telephone Number 7164397000

E-Mail Address (if known) \_\_\_\_\_

☐ Individual capacity ☒ Official capacity

## II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☐ Federal officials (a *Bivens* claim)
- ☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials? I am claiming that I am being denied my right to access to the courts, I am being denied my right to due process, I am being denied my right to due process and equal protection of the law, I am being denied my right to confront witnesses against me, as well as other rights as discovery may be turned over within the criminal proceedings.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

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Not applicable here as of yet known by defendant but defendant will preserve such rights due to the fact that U.S. Marshalls did execute an unlawful arrest and search of my person and other relevant property.

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- D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.  
see attached affidavit in response to such question
- 

### III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?  
NIAGARA COUNTY
- 

- B. What date and approximate time did the events giving rise to your claim(s) occur?  
LIST DATES HERE: 05\31\2023, 06\01\2023, 06\15\2023, 06\22\2023, Aug 28, 2023 motions filed and plaintiff requested evidence to prepare defense for trial, Sep 5, 2023 Judge refused motion DA received copies of motions, 10/13/2023, 01/05/2023
- 

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)  
SEE ATTACHED:
-

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

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**IV. Injuries**

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

no injuries

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**V. Relief**

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

The plaintiff sues the defendants for damages in excess of ten millions due to the reckless disregard by the defendants in this case and gives his notice to this court at this time.

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Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**


I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

03/08/2024

Signature of Plaintiff

Printed Name of Plaintiff

  
 Johnny Calixte - James
**B. For Attorneys**

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

AFFIDAVIT OF JOHNNY CALIXTE-JAMES

In re: **State of New York v. Johnny Calixte-James**, Indictment Number: 2022-435, affidavit in

Support of §1983 claims.

STATE OF NEW YORK)  
COUNTY OF NIAGARA) ss:

I, JOHNNY CALIXTE-JAMES, being duly sworn deposes and states:

1. I declare that I am over 18 years of age and the defendant in the pending above captioned indictment number.
2. I declare that I am of a sound mind at the time of presenting these facts in support of my claims.
3. I declare that I am being denied a fair opportunity to defend myself or participate in my defense.
4. I declare that the judge assigned to this case, the prosecutor assigned to this case, and all law enforcement that conducted the investigation as well as those who presented such to the D.A.'s office did so unlawfully and in contradiction to the United States Constitution, the New York Constitution, and applicable laws of the state of New York.
5. I declare that the facts and circumstances surrounding the investigation were unlawful and violated my rights in contradiction to the United States Constitution and New York Constitution.
6. I declare that me and my wife have had to write complaints to the judicial complaint committee on at least two occasions in which we received decisions in our favor.
7. I declare that I have been denied access to the court by the judge in this case and denied access to material evidence needed to prepare a defense for trial.
8. I declare that law enforcement has refused or has not been asked by the prosecution to turn over evidence requested by me which the judge states<sup>1</sup> does not exist.
9. I declare that I do not remember the events the prosecution is alleging due to the length of the alleged incident(s).
10. I declare that I was arrested nearly a year after the alleged sells to a confidential informant and the delay in arrest has not been justified with a reasonable standard accepted in law.
11. I declare that the following state officials in their official capacity acted in an objectively unreasonable manner by acting with subjective unreasonable intent while in their official

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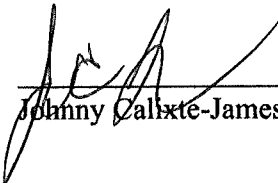
<sup>1</sup> This is relevant because the judge has cited in her decision of denying a wade hearing because she states that there is evidence that the confidential informant has some familiarity with me. I have not nor has my attorney been presented with such evidence to the best of my knowledge.

capacity in violation of the laws of United States and New York in compliance with each entity's constitution.

12. **The judge** in this case was unreasonable in her actions when she summarily denied my request to the court without rendering a decision as to supplementing my defense attorney's omnibus motion<sup>2</sup>.
13. **The prosecutor** in this case and during the grand jury proceedings has proceeded in this case without providing information that the judge has made decisions that me and my defense team does not have privy to.
14. **The law enforcement**<sup>3</sup> who investigated and handled all control buys and presented this case to the prosecution has not turned over evidence needed to prepare my defense despite my demands for such at every court proceeding so that me and my defense team may prepare a defense for trial.
15. It is my contention that the court proceedings are in contradiction to having invoked sufficient evidence that establishes probable cause in the case to prosecute me.

Whereas I am now seeking assistance from this honorable court to either have the relevant discovery turned over in my case or cease prosecution.

Dated: February 12, 2024



Johnny Calixte-James

In re; affidavit in support of 42 USC 1983 claims in **Indictment Number: 2022-435**

Cc: U.S. District Clerk Office (Buffalo), Niagara County Judge Caroline Wojtaszek, Niagara County Assistant District Attorney Carrington Crossley, Niagara County Sheriff's Office, and Niagara County Sheriff's Drug Task Force.

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<sup>2</sup> The motion presented by my attorney left out the fact that I did not remember the incident and needed further discover of how the informant knew me as the investigating officers stated in their reports and in addition the investigating officers never showed any drug dealings before, during, or after to any one other than the alleged sells to the informant. I requested proof of the drug dealing to prepare a defense in my case as well as any antecedent justification made by any higher ups in law enforcement and how did they reach their decisions. Nothing has been turned over to prepare a defense on a sell or an informant I have no knowledge of.

<sup>3</sup> In my case, I am requesting the reports of all investigations that prove the alleged facts that the prosecution is stating in the court proceedings to establish probable cause as to the charged counts in the indictment. Information that is critical to my defense since the informant participated in the alleged controlled buys that I was arrested for nearly a year after such alleged buys.



Revised 05/01 WDNV

**AFFIDAVIT OF SERVICE**

(If you are having your signature notarized, use this form)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

JOHNNY CALIXTE-JAMES

Plaintiff(s),

AFFIDAVIT OF SERVICE

v.

-CV-

HON CAROLINE A. WOJTASZEK, e.t. a.l.,

Defendant(s).

STATE OF NEW YORK )  
COUNTY OF Niagara ) ss.:

I, (print your name) Johnny Calixte-James, served a copy of the attached papers  
(state the name of your papers) Hon Judge Caroline A. Wojtaszek wade hearing desision, indicment papers, two separte court transtripts,  
two separte judicial committee complaints, affidavit supporting section 1983 claims,  
pro se 15 complaint for violations of civil rights non prisoner documents

upon all other parties in this case

by mailing ☒ by hand-delivering ☐ (check the method you used)  
these documents to the following persons (list the names and addresses of the people you served)  
Hon. Caroline A. Wojtaszek (Judge's chambers Niagara County Courthouse 175  
hawley st lockport, NY 14094), Carrington Crossley ADA(Niagara District Attorney's  
Office 175 hawley st lockport, NY 14094), Niagara County Sheriff's Office Drug Task  
Force(5526 niagara st ext lockport, NY 14094), Brian D. Seaman DA( niagara county  
district attorney's office 175 hawley st Lockport, NY 14094)

on (date service was made) \_\_\_\_\_

Sworn to before me this 8<sup>th</sup>  
day of March, 2024

[Signature]  
Notary Public

[Signature]  
(your signature)

SYDNEY M DELMONTE  
Notary Public - State of New York  
NO. 01DE0002971  
Qualified in Niagara County  
My Commission Expires Mar 20, 2027

**NIAGARA COUNTY COURT**



**Hon. Caroline A. Wojtaszek**  
County Judge and Surrogate

**JUDGE'S CHAMBERS**

Niagara County Courthouse  
175 Hawley Street  
Lockport, NY 14094  
(716) 280-6409  
(716) 280-6422 (fax)

**Holly E. Sloma, Esq., Law Clerk**  
(716) 280-6404

**Melina K. Smith, Court Clerk**  
(716) 280-6409

**Dona Chase, Confidential Secretary**  
(716) 280-6403

January 23, 2024

Carrington Crossley, ADA  
Niagara County District Attorney's Office  
175 Hawley St.  
Lockport, NY 14094

A. Joseph Catalano, APD  
Niagara County Public Defender's Office  
175 Hawley St.  
Lockport, NY 14094

Re: People v. Johnny C. James  
IND-71032-22/001  
DA Case #2022-435

Dear Counselors:

Enclosed herewith please find the Decision and Order issued by Judge Wojtaszek in connection with the above-captioned matter.

Should you have any questions, please call our office.

Very truly yours,

Dona L. Chase  
Confidential Secretary

/dlc  
Enc (1)

STATE OF NEW YORK  
COUNTY COURT : COUNTY OF NIAGARA

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PEOPLE OF THE STATE OF NEW YORK

vs.

Indictment No. 2022-435

JOHNNY JAMES,

Defendant

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**WADE HEARING DECISION**

**APPEARANCES:**

**CARRINGTON CROSSLEY, ESQ.**  
**Assistant District Attorney**

**A. JOSEPH CATALANO, ESQ.**  
**Attorney for Defendant**

**WOJTASZEK, J.**

The Defendant stands charged with two counts of Criminal Possession of a Controlled Substance in the Third Degree (PL §220.16[1]) and Criminal Sale of a Controlled Substance in the Third Degree (PL §220.39[1]) relating to the alleged possession and sale of a narcotic drug to a confidential informant on April 4, 2022.

A *Wade* Hearing was held before this Court on January 5, 2024 relative to a six-person photographic array displayed to the confidential informant on April 26, 2022. At that hearing, one witness testified, Investigator Michael Licinio of the Niagara County Sheriff's Office's Drug Task Force, a law enforcement officer with over seventeen years experience.

Licinio testified that Detective Holmes was the lead investigator on the case. Holmes prepared the photo array, which contained the Defendant's photograph in photo

number 2. On April 26, 2022, with Holmes present, Licinio displayed the array to the confidential informant, who was previously familiar with the Defendant, but knew him only as "Dude." According to Licinio, the witness identified photograph number 2 as the individual he knew as "Dude," that is, the person who allegedly sold him cocaine on April 4, 2022.

At the hearing, the People offered a photocopy of the photographic array into evidence as People's #1. The photocopy was redacted in areas designated for the witness to write details of his identification on the array. On cross-examination, Licinio conceded to certain variations among other photographs contained in People's #1 in evidence from the photograph of the Defendant. Defense Counsel suggested that the individual depicted in photo #1 appeared thinner than Defendant, the individual depicted in photograph # 5 appeared to have a thinner face and the individuals in photos number 3 and #6 had larger and fatter faces than the Defendant.

Additionally, Defense Counsel argued that the exhibit, a photocopy of the original array, was an insufficient basis for this Court to make a determination, as Licinio also conceded that the photographs in the photocopy were, in fact, darker than the original. Licinio did not have the original for the Court to view, which also had original identifying information and written markings made by the confidential informant. The Court therefore ordered the People to provide the Court the original array for purposes of rendering its decision, and to arrange for Defense Counsel to view the photos contained in the original. The Court advised Defense Counsel that should he request, the hearing could be re-opened at his request for any additional cross-examination of Licinio.

After the hearing, the Court was advised via email that Defense Counsel did

have the opportunity to view the original photographic array shown to the witness. The original was also provided to the Court for review. The original was also in black and white format, but less dark as the photocopy originally offered as an exhibit. Defense Counsel also did not request the opportunity to open cross-examination after being provided the opportunity to view the original photographic array.

This Court then has studied the original six-pack photo array, and, although each individual has slight variations in appearance, these differences do not serve to make photograph number 2 stand out from the rest.

### LEGAL CONCLUSION

While the People have the initial burden of going forward to establish the reasonableness of the police conduct and the lack of any undue suggestiveness in a pretrial identification procedure, it is the defendant who bears the ultimate burden of proving that such procedures were so unduly suggestive as to deprive the defendant of due process (*People v. Hathaway*, 55 AD3d 1286, 1287-1288 [4<sup>th</sup> Dept 2008] and *People v. Chipp*, 75 NY2d 327, 335 [1990]). This Court finds that the People met their burden of establishing that the conduct of the police here was reasonable and that the photo array was not unduly suggestive and defendant failed to meet his ultimate burden of proving that the procedures were unduly suggestive.


A photographic array is deemed suggestive only if a photograph therein depicts a unique characteristic which draws the viewer's attention so as to indicate that the police have focused on a particular individual. See *People v. Parker*, 257 AD2d 693, 684 NYS2d 300 (3d Dept 1999) *lv denied* 93 NY2d 1015, 697 NYS2d 574 (1999) and 93

NY2d 1024, 697 NYS2d 583 (1999). That is certainly not the case with the photographic array displayed here.

Although here, it appears the confidential informant had a prior familiarity with the Defendant, it is not necessary for the Court to reach the question of whether the People have introduced clear and convincing evidence of an independent basis for the identification because they have met their burden of showing that the police here acted lawfully and that the pretrial identification procedure employed here was non-suggestive. The Defense has not established that the manner by which the identification procedure was employed or the photo spread itself was improper or suggestive in any way. Accordingly, an in-court identification by the witness will be permitted.

This constitutes the decision of this Court.

DATED: January 23, 2024

  
HON. CAROLINE A. WOJTASZEK  
NIAGARA COUNTY COURT JUDGE

STATE OF NEW YORK  
COUNTY COURT : COUNTY OF NIAGARA

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

Indictment No. 2022-435

JOHNNY C. JAMES,  
Defendant.

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**COUNT 1**

The Grand Jury, of the County of Niagara, by this indictment, accuse the defendant, JOHNNY C. JAMES, of the crime of Criminal Possession of a Controlled Substance in the Third Degree, in violation of §220.16(1) of the Penal Law of the State of New York, committed as follows:

The defendant, on or about April 4, 2022, in Niagara County, knowingly and unlawfully possessed a narcotic drug with intent to sell it, that is: the defendant possessed cocaine with intent to sell it.

**COUNT 2**

The Grand Jury, by this indictment, further accuse the defendant, JOHNNY C. JAMES, of the crime of Criminal Sale of a Controlled Substance in the Third Degree, in violation of §220.39(1) of the Penal Law of the State of New York, committed as follows:

The defendant, on or about April 4, 2022, in Niagara County, knowingly and unlawfully sold a narcotic drug, that is: the defendant sold cocaine.

**COUNT 3**

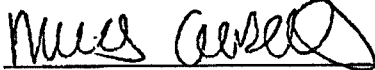
The Grand Jury, by this indictment, further accuse the defendant, JOHNNY C. JAMES, of the crime of Criminal Possession of a Controlled Substance in the Third Degree, in violation of §220.16(1) of the Penal Law of the State of New York, committed as follows:

The defendant, on or about April 7, 2022, in Niagara County, knowingly and unlawfully possessed a narcotic drug with intent to sell it, that is: the defendant possessed cocaine with intent to sell it.


**COUNT 4**

The Grand Jury, by this indictment, further accuse the defendant, JOHNNY C. JAMES, of the crime of Criminal Sale of a Controlled Substance in the Third Degree, in violation of §220.39(1) of the Penal Law of the State of New York, committed as follows:

The defendant, on or about April 7, 2022, in Niagara County, knowingly and unlawfully sold a narcotic drug, that is: the defendant sold cocaine.



Foreperson, November 2022 Grand Jury  
Filed: NOV 23 2022

  
BRIAN D. SEAMAN  
Niagara County District Attorney



STATE OF NEW YORK : COUNTY OF NIAGARA  
COUNTY COURT : PART 2

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PEOPLE OF THE STATE OF NEW YORK,

-vs-

DKT NO.: IND-71032-22/001  
DA NO.: 2022-435

JOHNNY C. JAMES,

Defendant.

Wade Hearing

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Niagara County Courthouse  
175 Hawley Street  
Lockport, New York 14094  
January 5, 2024

HELD BEFORE:

HONORABLE CAROLINE A. WOJTASZEK  
County Court Judge

APPEARANCES:

BRIAN D. SEAMAN, ESQ.  
Niagara County District Attorney  
BY: CARRINGTON M. CROSSLEY, ESQ.  
Assistant District Attorney  
Appearing for the People

A. JOSEPH CATALANO, ESQ.  
Niagara County Public Defender's Office  
Appearing for the Defendant

MICHELL A. JACOB  
OFFICIAL COURT REPORTER

INDEX OF WITNESSES

<u>FOR THE PEOPLE</u>	<u>DIR</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Michael Licinio	10				14
Michael Licinio	14	17			

INDEX TO EXHIBITS

<u>PEOPLE'S</u>		<u>FOR ID</u>	<u>IN EVID</u>
1 Photo Array		3	15
-	*	*	*

*PEOPLE vs. JAMES*

3

1 (Whereupon, Photo Array was marked as  
2 People's Exhibit 1 for identification.)

3 THE CLERK: The next matter on the calendar  
4 is People of the State of New York versus Johnny James.  
5 Please note your appearances for the record.

6 MS. CROSSLEY: Carrington Crossley on behalf  
7 of the People.

8 MR. CATALANO: A. Joseph Catalano, Niagara  
9 County Public Defender's Office, for Mr. James.  
10 Mr. James is present in the courtroom at this moment.

11 THE COURT: All right. We are scheduled for  
12 a Wade hearing today. Are both parties ready to  
13 proceed?

14 MS. CROSSLEY: The People are ready.

15 MR. CATALANO: I don't believe Mr. James is  
16 ready, your Honor.

17 THE COURT: I'm sorry. Mr. James?

18 THE DEFENDANT: Your Honor, for the record, I  
19 still have not been given the full discovery, and I'm  
20 still being denied access to the courts. I would like  
21 adequate access to these courts to file my motions, to  
22 have my motions adopted by my attorney. He's been  
23 misinterpreting my request.

24 THE COURT: All right. So let's handle one  
25 thing at a time. First of all, I do want to say that

*PEOPLE vs. JAMES*

4

1 at our last appearance there was an agreement to have  
2 the court listen to the audio in this matter for  
3 audibility. I did listen on the 20th of October, 2023,  
4 to both files, and did -- or I do deem them audible so  
5 there is that. As far as discovery is concerned, the  
6 court deemed the People ready for trial after discovery  
7 had been turned over as of June 15th of 2023, so all  
8 discovery has been turned over to the defense.

9 Mr. Catalano, what do you have to say about your  
10 disclosure of discovery to Mr. James?

11 MR. CATALANO: Your Honor, at this time  
12 everything that we have received from the District  
13 Attorney's Office has been turned over to Mr. James.

14 THE COURT: All right. And we have gone over  
15 this before, Mr. James, but I'll reiterate it again  
16 that your motions would have to be adopted by your  
17 attorney for the court to consider them. Have you had  
18 an opportunity to review the motions in question?

19 MR. CATALANO: Yes, your Honor. They're  
20 redundant and to my motions that I had filed previous,  
21 some of them say similar things. They look like they  
22 came from a -- something was pulled off the internet.  
23 There's nothing new information in there from what I  
24 was provided.

25 THE COURT: All right. And we're about today

## PEOPLE vs. JAMES

5

1 to go forward with a hearing which is a suppression  
2 hearing, for the court to hear the underlying facts and  
3 circumstances of a photo array that was conducted in  
4 this case, for the court to make a decision on that  
5 legal issue. So I, frankly, Mr. James, don't  
6 understand what you mean by not having access to the  
7 court. You've been granted a suppression hearing.  
8 That's been done. There were no statements in this  
9 case, so what exactly are you referring to that's not  
10 being done by the court?

11 THE DEFENDANT: For the record, your Honor, I  
12 still have not been given the in camera proceedings as  
13 regards to --

14 THE COURT: You're not entitled to the in  
15 camera proceedings. Hold on. This -- the confidential  
16 informant -- I just want to make sure. Yes, the  
17 confidential informant in this case is, by law, not to  
18 be turned over by you -- not to be turned over to you,  
19 the identity of that person. The in camera review that  
20 would have been done of the CI -- I thought these were  
21 two buys, so I'm not sure what you're referring to. Go  
22 ahead.

23 THE DEFENDANT: I'm sorry, your Honor. You  
24 kind of cut me off in the middle of speaking.

25 THE COURT: Go ahead.

## PEOPLE vs. JAMES

6

1 THE DEFENDANT: Yeah. So, like I'm saying  
2 for the record, I have not been given any in camera  
3 proceedings as regards to the investigation, how the  
4 investigation started. I have not been given adequate  
5 access to the courts to allow my documents or my  
6 motions to be filed that will open -- that will open it  
7 up to allow me to properly -- to start a proper  
8 defense, your Honor. All this stuff that's been given  
9 to me by the defense is basically based on belief and  
10 information.

11 If the state said they have -- the only thing that  
12 the state has provided me is their said CI, and this is  
13 the only witness that the state said that they have. I  
14 have not been given adequate information in regards to  
15 when this investigation started and when this  
16 investigation has ended. This has definitely --  
17 definitely affects my guilt, my innocence or maybe  
18 and/or punishment, your Honor, so I'm requesting that  
19 the court provide these documents so I can properly  
20 prepare an adequate defense, your Honor.

21 THE COURT: Okay. Thank you. Miss Crossley,  
22 can you place on the record, is there any in camera  
23 proceedings that you're aware of in this case?

24 MS. CROSSLEY: No, your Honor.

25 THE COURT: All right. So when you say,

*PEOPLE vs. JAMES*

7

1 Mr. James, that it's "upon belief," I just want you to  
2 fully appreciate that the DA's office is under an  
3 obligation to provide all the information that is  
4 required by law. That information gets turned over.  
5 If there is something that they are found later to be  
6 in possession of that they didn't turn over, the court  
7 has the ability to sanction them with regards to that  
8 evidence. I don't, nor does defense counsel, sit in  
9 the District Attorney's Office and make sure every  
10 piece of paper gets turned over to defense. It's not  
11 humanly possible. So what does happen is the court  
12 makes an inquiry of the District Attorney's Office that  
13 they have fulfilled their obligation. The defense has  
14 the ability to review the information provided. They  
15 are very well equipped to look at that and know what to  
16 expect in a case like this, and if something is  
17 missing, they are to bring that to the court's  
18 attention or challenge the prosecution on whether or  
19 not everything's been turned over.

20 I can tell you that, by law, information regarding  
21 a confidential informant does not get turned over until  
22 the eve of trial, so that is denied. And as far as an  
23 in camera review -- or an in camera proceeding, there  
24 has been none. I have reviewed the grand jury minutes  
25 in this case. There was no search warrant in this case

*PEOPLE vs. JAMES*

8

1       that would have necessitated an in camera review. And  
2       you just heard, as an officer of the court from the  
3       District Attorney's Office, that there is no such  
4       proceeding. So, I will give you one more second to say  
5       whatever it is you have to say but then we are running  
6       this hearing. Go ahead.

7               THE DEFENDANT: For the record, your Honor,  
8       like I stated just recently, I have not been given all  
9       in camera proceedings.

10              THE COURT: There is no in camera  
11       proceedings.

12              THE DEFENDANT: Your Honor, I apol -- my  
13       apologies but I would like to finish. I will give you  
14       back --

15              THE COURT: All right. I'm going to give you  
16       about five minutes. What do you have to say? I  
17       already gave you your opportunity.

18              THE DEFENDANT: Thank you, your Honor.

19              THE COURT: Go ahead.

20              THE DEFENDANT: All right. So, like I said,  
21       I have not been given all -- any in camera things  
22       that -- that shows when this investigation started and  
23       when this investigation has ended, so I cannot properly  
24       set a defense if I do not know these things.

25              THE COURT: Okay.



PEOPLE vs. JAMES

9

1 THE DEFENDANT: The state has only provided  
2 information, has not given me anything to properly  
3 defend myself, your Honor.

4 THE COURT: All right. Your request is  
5 denied. We're starting the hearing. Sit down.

6 MR. CATALANO: Your Honor, just -- my client  
7 has some items that he placed before the Appellate  
8 Division. I don't know what they are. I think he  
9 wanted to brief the court on what he placed before the  
10 Appellate Division.

11 THE COURT: What did you place before the  
12 Appellate Division?

13 THE DEFENDANT: My motions that I would like  
14 for the court to accept, your Honor, but I did not ask  
15 my attorney to speak on that. Once again, I'm being  
16 misinterpreted.

17 THE COURT: Okay.

18 THE DEFENDANT: He's misinterpreting.

19 THE COURT: All right. Thank you.  
20 Everybody, please be seated.

21 MR. CATALANO: Thank you, your Honor.

22 THE COURT: All right. We're going to begin  
23 the Wade hearing. How many witnesses do the People  
24 have?

25 MS. CROSSLEY: One, your Honor.

LICINIO - DIRECT - CROSSLEY

10

1 THE COURT: Okay. Thank you. All right.

2 Any opening remarks?

3 MS. CROSSLEY: The People waive.

4 THE COURT: All right. Defense?

5 MR. CATALANO: No, your Honor. Thank you.

6 THE COURT: All right. Thank you. Call your  
7 first witness.

8 MS. CROSSLEY: Investigator Licinio.

9 THE COURT: All right. Good morning. Please  
10 raise your right hand.

11 M I C H A E L L I C I N I O, Investigator, 5526 Niagara  
12 Street Extension, Lockport, New York, having been duly  
13 called and sworn/affirmed, took the witness stand, and  
14 testified as follows:

15 THE COURT: All right. You can take a seat  
16 and if you could tell us your first and last name,  
17 spelling your last, please.

18 THE WITNESS: Yes. Investigator Michael  
19 Licinio, L-I-C-I-N-I-O.

20 THE COURT: And your business address.

21 THE WITNESS: 5526 Niagara Street Extension,  
22 Lockport, New York.

23 THE COURT: All right. Your witness.

24 DIRECT EXAMINATION

25 BY MS. CROSSLEY:

LICINIO - DIRECT - CROSSLEY

11

1 Q Could you tell us how you're currently  
2 employed?

3 A I am an investigator with the Niagara County  
4 Sheriff's Office.

5 Q How long have you been with the sheriff's office?

6 A Seventeen-and-a-half years now.

7 Q Okay. As an investigator, what are some of the  
8 typical duties and tasks that you perform?

9 A Currently I'm assigned to the drug task force so I  
10 investigate crimes involving narcotics, trafficking of  
11 narcotics, firearms and other vice crimes.

12 Q How long have you been with that department  
13 specifically?

14 A Since 2013.

15 Q And prior to that, did you hold any other  
16 assignments?

17 A Yes. So I've been an investigator since 2013.  
18 I've been at the drug task force since 2017. Prior to that  
19 I was assigned to the road patrol division.

20 Q All right. Were you employed in that same fashion  
21 in April of 2022?

22 A Yes, I was.

23 Q And directing your attention to April 26th of  
24 2022, around 1:45 p.m., did you assist in an investigation  
25 on that day?

LICINIO - DIRECT - CROSSLEY

12

1 A Yes.

2 Q Who was the target of that investigation?

3 THE COURT: I'm sorry, could you give me that  
4 date again? I didn't hear it.

5 MS. CROSSLEY: April 26th, 2022.

6 THE COURT: Thank you.

7 BY MS. CROSSLEY:

8 Q And who was the target of that investigation?

9 A Johnny James.

10 Q On April 26th, what was your role?

11 A I gave a line-up -- a photo line-up to a  
12 confidential informant for review.

13 Q And prior to that day, did you have any other role  
14 in that same investigation?

15 A Yes. My partner Detective Robert Holmes was lead  
16 investigator, and I assisted him with the investigation.

17 Q Did you prepare the photo array that you  
18 administered on April 26th?

19 A Yes.

20 Q And did you, in fact, show it to somebody on that  
21 day?

22 A Yes, I did.

23 MS. CROSSLEY: May I approach?

24 THE COURT: Yes.

25 BY MS. CROSSLEY:

LICINIO - DIRECT - CROSSLEY

13

1 Q I'm now showing the witness what's been marked for  
2 identification as People's Exhibit 1. Do you recognize this  
3 document?

4 A Yes.

5 Q What is that?

6 A It's a redacted photocopy of the original photo  
7 line-up that I gave to the confidential informant.

8 Q Is it fair to say the redactions relate to  
9 information about the confidential informant?

10 A Yes.

11 Q And aside from those redactions, are there any  
12 other differences between this document and the original  
13 document?

14 A This document is darker due to the photocopy.

15 Q Is your signature on this document?

16 A Yes, it is.

17 Q And is this, in fact, the same document that was  
18 viewed and signed by the confidential informant?

19 A It is a accurate photocopy of the original, yes.

20 MS. CROSSLEY: I would now offer People's  
21 Exhibit 1 into evidence.

22 MR. CATALANO: Just a couple of --

23 THE COURT: Voir dire?

24 MR. CATALANO: Please, your Honor, a couple  
25 of voir dires.

LICINIO - DIRECT - CROSSLEY

14

1 VOIR DIRE EXAMINATION

2 BY MR. CATALANO:

3 Q Did you just state that this is a darker copy?

4 A Yes.

5 Q So it's not a true and accurate depiction because  
6 it's darker than the original.

7 A It is darker than the original, yes.

8 MR. CATALANO: Okay. Your Honor, based on  
9 that, I would object to it being offered into evidence.  
10 He's just declared that it's not the same.

11 MS. CROSSLEY: Your Honor, I would -- I would  
12 respond by saying this is the best quality we could  
13 obtain after photocopying the original, and it fairly  
14 and accurately depicts the information.

15 THE COURT: Where is the original?

16 DIRECT EXAMINATION (CONTINUED)

17 BY MS. CROSSLEY:

18 Q Is that something that's held in the drug task  
19 force office?

20 A Yes. I believe it would be in Detective Holmes'  
21 file.

22 THE COURT: All right. I will consider the  
23 weight of it but, nevertheless, I'll allow it over  
24 objection for the purpose of this hearing. Mark it  
25 received.

LICINIO - DIRECT - CROSSLEY

15

1 (Whereupon, People's Exhibit 1 marked for  
2 identification was received in evidence.)

3 BY MS. CROSSLEY:

4 Q Now showing the witness what's in evidence as  
5 People's 1. Prior to showing this array to a confidential  
6 informant, did you provide instructions for what was to be  
7 done?

8 A Yes.

9 Q Are those instructions something that you read?

10 A Yes.

11 Q Are those instructions printed on People's Exhibit  
12 1?

13 A Yes, they are.

14 Q Was the CI able to identify anyone in the array?

15 A Yes.

16 Q Did that person circle and initial the number  
17 relating to that person's photograph?

18 A Yes.

19 Q Which number is that?

20 A Number 2.

21 Q And who did the CI identify that person as?

22 A The person that sold them crack cocaine.

23 Q Did the CI know any nickname relating to that  
24 individual?

25 A Yes.

LICINIO - DIRECT - CROSSLEY

16

1 Q What was the nickname?

2 A Dude.

3 Q Was anybody else present when the photo array was  
4 administered?

5 A Yes.

6 Q Who was that?

7 A Detective Holmes.

8 Q Did you or Detective Holmes suggest or point who  
9 the CI was supposed to select?

10 A No.

11 Q Are you aware of the legal name of the person  
12 pictured in Number 2?

13 A Yes.

14 Q What is that?

15 A Johnny James.

16 MS. CROSSLEY: The People have no further  
17 questions.

18 THE COURT: I just have one question for this  
19 officer. Investigator Licinio, you indicated that you  
20 were aware of the legal name of the person depicted in  
21 Number 2. How would that be? How did you know his  
22 legal name?

23 THE WITNESS: In order to do the photo array,  
24 Detective Holmes identified him and told me.

25 THE COURT: Okay. All right. Any further



LICINIO - CROSS - CATALANO

17

1 questions from the People after the court's question?

2 MS. CROSSLEY: No, your Honor.

3 THE COURT: All right. Thank you. You may  
4 cross.

5 MR. CATALANO: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. CATALANO:

8 Q Investigator, how are you today?

9 A Good. How are you?

10 Q Good. Now, how did you come about having Mr. James  
11 as a suspect?

12 A The confidential informant brings that information  
13 to Detective Holmes who he can purchase narcotics from.

14 Q Do you know what date that was?

15 A Not off the top of my head, no.

16 Q Was it -- how long before this alleged buy did  
17 that happen?

18 A Before the alleged buy?

19 Q Yeah.

20 A It would have been a short period of time. I  
21 couldn't tell you exactly, though.

22 Q Now, you said Detective Holmes knew of the actual  
23 name Johnny James, correct?

24 A Yes.

25 Q And where did he learn that from, do you know? If

LICINIO - CROSS - CATALANO

18

1 you know.

2 A I don't know.

3 Q Okay. Now, when you get to a line-up, how does  
4 that come about?

5 A After the course of the investigation, the  
6 controlled purchases are done, we proceed to make a line-up  
7 that is shown to the confidential informant.

8 THE COURT: It's a line-up or a photo array?

9 THE WITNESS: Photo array.

10 MR. CATALANO: I apologize. Photo array.

11 THE COURT: All right. Thank you.

12 BY MR. CATALANO:

13 Q But how do you get to that six-pack?

14 A How do we make it?

15 Q Yeah.

16 A We have a software, an application on our  
17 computers some of us have access to. We know who our  
18 target, our suspect is, we obtain a photo of them, place it  
19 into the photo array and then go through the system and  
20 select other individuals that are similar in appearance to  
21 the suspect.

22 Q So you select the individual to go in the  
23 six-pack.

24 A Yes.

25 Q Now, you didn't have a description. You just had

LICINIO - CROSS - CATALANO

19

1 a name; is that correct?

2 A Of Mr. James?

3 Q Yes.

4 A Well, I had his name and a photograph of him.

5 Q Okay. Now, let's draw your attention to, I guess  
6 this would be People's 1 in evidence, which you've already  
7 stated is a darker version of the actual original. Now, it  
8 appears that Mr. James was picked out of the top center,  
9 correct?

10 A Yes.

11 Q Okay. Now, if we look to the gentleman to the  
12 left of him, would you agree that his face is much skinnier?

13 A It's a little bit skinnier.

14 Q Okay. And then if we go -- that would be Photo  
15 Number 1. We go down to Photo Number 4, and even given the  
16 fact that it's a darker copy, that person seems to be --  
17 have much, much darker skin than Mr. James; is that correct?

18 A In this copy that I said is darker, yes.

19 Q Okay. Then we go down to photo five and that  
20 individual seems to have a longer, thinner face than  
21 Mr. James; is that correct?

22 A Maybe a little bit.

23 Q Okay. And if you go to photos three and six,  
24 three being just to the right of Mr. James and six being  
25 below and to the right of Mr. James, those two individuals

*LICINIO - CROSS - CATALANO*

1 have larger faces or fatter faces than Mr. James; is that  
2 correct?

3 A Maybe just a little bit but not much.

4 Q Okay. So out of the six -- five photos that are  
5 not Mr. James, one has a skinnier face, one has a much  
6 darker complexion, and then the other two -- other three --  
7 other three -- excuse me -- have fatter faces.

8 A I mean, mild differences that everyone -- I can't  
9 put six photos of Mr. James in this photo array so everyone  
10 in this earth looks different unless you're an identical  
11 twin. We try to get them as close as we can --

12 Q I understand that.

13 A -- with what we have.

14 Q Okay. But that is -- that is correct, right?

15 A That they're --

16 Q They're different.

17 A -- similar but different?

18 Q Okay. Yes.

19 A They are very similar but different in -- from the  
20 aspect of people don't look exactly the same.

21 Q Okay. Now, you said that Mr. James would have  
22 been brought to your attention by the CI a short period  
23 before you initiated this first buy.

24 A I didn't initiate the buy.

25 Q No, I understand. I understand you did not. Your

LICINIO - CROSS - CATALANO

21

1 investigation initiated the first buy.

2 A Detective Holmes' investigation, yes.

3 Q And you were assisting him.

4 A Yes.

5 Q Okay. So is that the normal proper procedure,  
6 that a CI comes with information and within a couple of  
7 days, you set up a buy?

8 A It could be a couple days. It could be that day.  
9 When they come with the information, depending on what is  
10 going on that day, what our schedules look like, we then go  
11 out and do controlled purchases.

12 Q Okay. And you yourself didn't know who Mr. James  
13 was prior to this, correct?

14 A Prior to this investigation?

15 Q Yes.

16 A No.

17 Q He was not, quote, unquote, on your radar prior to  
18 this?

19 A I can't really recall. Again, we only knew him as  
20 Dude at that time, and we had to put a little more work in  
21 to identify him as Johnny James.

22 Q Okay. And this confidential informant, had he  
23 ever been used before?

24 A Had they been used before?

25 Q Yes.



## PEOPLE vs. JAMES

23

1 People's witness has established that police conduct  
2 was reasonable and that the procedure was not  
3 suggestive.

4 THE COURT: Mr. Catalano?

5 MR. CATALANO: Yes, your Honor. Thank you.  
6 I think the testimony of the investigator is clear.  
7 One of the photos is darker -- much darker. Even given  
8 the fact that this is not a true and accurate copy of  
9 the original, that two of the faces are slimmer than --  
10 and when the court looks at it will notice they're much  
11 slimmer and longer than Mr. James, and the other two  
12 are much wider and shorter than Mr. James. So you have  
13 two that are shorter and wider, two that are longer and  
14 thinner and then one that is darker. So Mr. James's  
15 photo is going to stand out from that. He is much  
16 different in that photo than the other five  
17 individuals. And based on that, your Honor, I would  
18 ask the court to disqualify the People from using that  
19 photo during trial.

20 THE COURT: All right. Thank you. I will  
21 review the item in evidence and take a ten-minute  
22 recess.

23 (Whereupon, a recess was taken from 11:24  
24 a.m. until 11:29 a.m.)

25 THE COURT: All right. We're back on the

*PEOPLE vs. JAMES*

24

1 record on the People versus Johnny James. Let the  
2 record reflect that Mr. James is present along with his  
3 attorney, Mr. Catalano, as well as the District  
4 Attorney's Office represented by Miss Crossley. This  
5 court has had the opportunity to review People's  
6 Exhibit 1 that is in evidence, and I have a couple of  
7 questions for defense counsel. Have you ever seen the  
8 original?

9 MR. CATALANO: I have not seen the original,  
10 your Honor.

11 THE COURT: Have you seen a colored copy?

12 MR. CATALANO: That is the only copy I've  
13 seen, your Honor.

14 THE COURT: All right. So this is  
15 unacceptable to the court. What I am proposing happen,  
16 so that I can make a true review of the photo array  
17 that was administered in this case, I need the original  
18 or a colored copy to be given and distributed to the  
19 defense, and the court would like to see the original.  
20 So -- and, for example, People's -- the photograph in  
21 Number 4, I can see barely any features but the  
22 slightest dot of the white of the person's eyes. I  
23 cannot make a determination on this, nor do I ever,  
24 frankly, want to see a black and white copy of a black  
25 male in a photo array in a hearing again.



## PEOPLE vs. JAMES

25

1           So, with that, what I'm going to ask is that that  
2           be provided, a colored copy be provided. I understand  
3           that there's no information about the CI to be turned  
4           over, by law, at this juncture, but a better copy needs  
5           to be given, and I want the exact copy that was given  
6           to Mr. Catalano and the original submitted to the  
7           court. All right?

8           MS. CROSSLEY: Your Honor, for what it's  
9           worth, the original is also in black and white. Would  
10          it be best to arrange like a viewing for Mr. Catalano  
11          rather than requiring another color copy of the black  
12          and white original?

13          THE COURT: I want what was given to the CI  
14          to be viewed by Mr. Catalano and the court. That's  
15          what I want.

16          MS. CROSSLEY: Okay.

17          THE COURT: So if a black and white version  
18          was given to the CI -- which I would be surprised by --  
19          but if that's the case, that's the case, and then I'll  
20          review it from there, but I'm giving you an opportunity  
21          to provide it to the court for the court's proper  
22          review. So, my decision is reserved. All right?

23          MR. CATALANO: Thank you, your Honor.

24          THE COURT: We'll give you another court  
25          date. We'll put it out a little bit, just so that this

PEOPLE vs. JAMES

26

1 can be effectuated.

2 THE CLERK: February 8th at 9:30 -- or I'm  
3 sorry, March 8th at 9:30.

4 THE COURT: And, Mr. Catalano, if after you  
5 review this material, if you want to make a motion to  
6 reopen because you have additional questions, the court  
7 will consider that.

8 MR. CATALANO: Thank you very much, your  
9 Honor.

10 THE COURT: All right. Thank you. All  
11 right. We'll see you at the next court date.

12 MS. CROSSLEY: Thank you.

13 MR. CATALANO: Thank you, your Honor.

14 (Proceedings concluded.)

15 \* \* \*

16 The foregoing is certified to be a true and accurate  
17 transcript according to my stenographic notes.

18   
19 \_\_\_\_\_  
20 Mitchell A. Jacob  
21 Official Court Reporter  
22  
23  
24  
25

STATE OF NEW YORK : COUNTY OF NIAGARA  
COUNTY COURT : PART 2

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PEOPLE OF THE STATE OF NEW YORK,

-vs-

DKT NO.: IND-71032-22/001  
DA NO.: 2022-435

JOHNNY C. JAMES,

Defendant.

Pre-Trial Conference  
and Motion

---

Niagara County Courthouse  
175 Hawley Street  
Lockport, New York 14094  
September 5, 2023

HELD BEFORE: HONORABLE CAROLINE A. WOJTASZEK  
County Court Judge

APPEARANCES: BRIAN D. SEAMAN, ESQ.  
Niagara County District Attorney  
BY: CARRINGTON M. CROSSLEY, ESQ.  
Assistant District Attorney  
Appearing for the People

A. JOSEPH CATALANO, ESQ.  
Niagara County Public Defender's Office  
Appearing for the Defendant

*PEOPLE vs. JAMES*

2

1 THE CLERK: The next matter on the calendar  
2 is People of the State of New York versus Johnny James.  
3 Please note your appearances for the record.

4 MS. CROSSLEY: Good morning. Carrington  
5 Crossley appearing on behalf of the People.

6 MR. CATALANO: A. Joseph Catalano, Niagara  
7 County Public Defender's Office, for Mr. James.  
8 Mr. James is present in the courtroom at this time.

9 THE COURT: All right. Good morning.

10 MR. CATALANO: Good morning, your Honor.

11 THE COURT: I did receive quite a lengthy  
12 motion on behalf of Mr. James filed by Mr. Catalano on  
13 August 22nd, and I just received the People's response.  
14 And I know that first motion was late and now we have  
15 the response coming in September 1st. I have not had a  
16 chance to review that. In light of the request by the  
17 defense, I don't know if either party would like to add  
18 to their motion and response by way of any argument  
19 today to be considered by the court in the court's  
20 review. You're welcome to do that today. But I also  
21 want to mention that the court did receive a pro se  
22 motion from Mr. James that came in, again, late last  
23 week.

24 Just so that I explain to you, Mr. James, when you  
25 are represented by counsel, the court will not consider

## PEOPLE vs. JAMES

3

1 your motion unless that is reviewed and adopted by your  
2 attorney. So, anything you say in court can be used  
3 against you. I ask that you talk to your attorney  
4 before you make any further comment. Can you talk to  
5 your attorney?

6 (Whereupon, counsel and defendant conferred  
7 off the record.)

8 THE DEFENDANT: Your Honor, I do understand I  
9 should have gone through my attorney. I initially went  
10 through my attorney. He refused to submit these  
11 supplemental motions. I just found these issues have  
12 merit in this court pertaining to this case, your  
13 Honor, so I just took it upon myself, and there's no  
14 other way for me to do so other than to have them  
15 submitted --

16 THE COURT: All right.

17 THE DEFENDANT: -- because, your Honor, there  
18 were issues, unresolved issues in this case that  
19 pertain to my innocence, to my guilt and to my  
20 punishment, and I wanted to address those issues.

21 THE COURT: All right. Well, it appears  
22 we're at a bit of a conundrum because, like I said,  
23 that is the position of the court. And attorneys can  
24 only stand here as an officer of the court and put  
25 forth arguments that they believe have legal merit, so

## PEOPLE vs. JAMES

4

1 your motion will not be responded to until you two  
2 reconcile those issues. I don't know if you need to  
3 have further time to go over the issues contained in  
4 your motion, but the People will not respond, and the  
5 court will not issue a decision unless it's put forth  
6 by your attorney. So it seems that you at the moment  
7 are at an impasse, but I can certainly give you more  
8 time to work through that.

9 MR. CATALANO: Your Honor, I haven't seen  
10 this direct motion but there were a number of  
11 motions -- pro se motions that he sent to me. Most of  
12 them were the sovereign citizen issue arguments which  
13 really have no basis, no merit. We've been through  
14 this a number of times, your Honor, in this court.  
15 That is why they were not filed.

16 THE COURT: All right. Go ahead, Mr. James.

17 THE DEFENDANT: Your Honor, my motion is most  
18 definitely does not pertain to sovereign citizen. My  
19 motion pertain to the first instance.

20 THE COURT: What does that mean?

21 THE DEFENDANT: First instance, as far as you  
22 know, what gave the courts jurisdiction to pursue the  
23 defendant on this matter on whether -- whether I was  
24 requesting all in camera proceedings in this matter,  
25 your Honor, so I do feel like my motions have merit.

## PEOPLE vs. JAMES

5

1 And, like I said, your Honor, I understand that you  
2 may, may not find that it's -- I guess valid for you so  
3 I will be -- I will be moving forward interlocutory  
4 appeal.

5 (Court reporter requested clarification.)

6 THE COURT: Interlocutory.

7 THE DEFENDANT: Yes, interlocutory appeals.

8 THE COURT: So, sir, just -- you're welcome  
9 to do what you think is right for your best interest,  
10 but the legal terms that you have just thrown out to  
11 the court, frankly, do not make legal sense to the  
12 court in the way that you're presenting them, so here  
13 is your issue: I will not consider your motion when  
14 you are represented by counsel. If you are asking to  
15 represent yourself and put forth your own motions, then  
16 we will go through the questions that would go toward  
17 whether or not you want to represent -- represent  
18 yourself. With that comes a lot, because you would  
19 then be representing your own interest without the  
20 benefit of someone who has legal training. It's a  
21 lengthy colloquy that I will go through with you  
22 because you would be giving up a very important right  
23 that you have to be represented by counsel.

24 What I would suggest you do is that you sit down  
25 with Mr. Catalano and have a further meeting. We can

## PEOPLE vs. JAMES

6

1 bring you back here on another day and give you a  
2 chance to think about that because it is a very big  
3 decision, but this court will not consider your motion  
4 while you are represented by counsel. So what would  
5 you like to do?

6 THE DEFENDANT: Mr. Catalano, he's -- has no  
7 reason to leave. I most definitely will have him  
8 consider submitting my motions.

9 THE COURT: All right. So do you want to  
10 adjourn this for two weeks and come back after you've  
11 had an opportunity to meet with Mr. Catalano?

12 THE DEFENDANT: I would like more time than  
13 that, your Honor.

14 THE COURT: I can give you three weeks, no  
15 more than a month. We have to move this case along.

16 THE DEFENDANT: Okay. Most definitely, your  
17 Honor.

18 THE COURT: How much?

19 THE DEFENDANT: A month would be fine, your  
20 Honor.

21 THE COURT: All right. And you can also in  
22 that time consider obtaining your own counsel, if you  
23 so choose. All right. We'll give it a month, time  
24 chargeable to the defense.

25 THE CLERK: October 13th at 9:30.



*PEOPLE vs. JAMES*

7

1 MR. CATALANO: That's fine. Thank you, your  
2 Honor.

3 THE COURT: All right. Thank you. In the  
4 meantime, I did receive, like I said -- sir, we're not  
5 leaving yet. We still are talking. I did receive the  
6 People's response. I will review that in the interim.

7 Is there anything further at this time,  
8 Mr. Catalano, you would like to say on the motion filed  
9 by you?

10 MR. CATALANO: Your Honor, the only thing I  
11 would like to mention is that I was never provided -- I  
12 know there's a protective order in place, but I was  
13 never provided the body cam worn by the CI. I was able  
14 to view it with Miss Carrington. That's where I got  
15 the argument that -- regarding the audibility hearing.

16 THE COURT: Oh, all right.

17 MR. CATALANO: But I have never been provided  
18 it, so I've only been able to look at it once. I know  
19 that the protective order prevents me from giving it to  
20 Mr. James, however, I don't believe it prevents the  
21 People from providing it to me.

22 THE COURT: Miss Crossley?

23 MS. CROSSLEY: The People are open to  
24 allowing Mr. Catalano to view it as many times as he  
25 wishes in the context of our offices, but we would hold

*PEOPLE vs. JAMES*

8

1 the position that the protective order and protection  
2 allows to withhold that information.

3 THE COURT: All right. At least on that  
4 issue, Mr. Catalano, you can view it as many times as  
5 you want at this point. If you feel that that's not  
6 sufficient, then you can make motion to the court.

7 MR. CATALANO: Well, your Honor, part of the  
8 issue is, you know, if we proceed down this road, I  
9 would like -- I may want an expert to review the  
10 quality of the video, the audibility of it.

11 THE COURT: Do we need to have an audibility  
12 hearing?

13 MR. CATALANO: I believe so, your Honor. I  
14 mean, there's parts of it that you cannot hear  
15 anything.

16 THE COURT: All right. Anything you'd like  
17 to say on that?

18 MS. CROSSLEY: That's one of the sections  
19 that the People have responded to in our motion.

20 THE COURT: All right. I will further review  
21 that regarding audibility.

22 MR. CATALANO: Thank you, your Honor.

23 THE COURT: Anything else, other than that  
24 issue you would like to highlight for the court?

25 MR. CATALANO: Not at the moment, your Honor.

*PEOPLE vs. JAMES*

9

1 Thank you very much.

2 THE COURT: All right. Miss Crossley,  
3 anything from you?

4 MS. CROSSLEY: In the defense counsel's  
5 motion, he requested this court to review --

6 THE COURT: I'm sorry. Could you --

7 MS. CROSSLEY: Defense's motion requested the  
8 court's review of the grand jury minutes and exhibits,  
9 and the People did consent to that in our motion. I  
10 don't know if we'd want to wait in providing those  
11 materials to the court or if we want to do that now, we  
12 do have those available.

13 THE COURT: All right. I'll take that now so  
14 that I can have everything reviewed before the next  
15 appearance. All right. Thank you. I am in receipt.

16 MR. CATALANO: Thank you, your Honor.

17 THE COURT: All right. Anything further from  
18 either side until we meet again?

19 MS. CROSSLEY: No, your Honor.

20 MR. CATALANO: No -- oh, just is there an  
21 offer, just so we have it on the record?

22 MS. CROSSLEY: There is. The offer is to the  
23 class D felony of criminal sale of controlled substance  
24 in the fifth degree, under Penal Law 220.31,  
25 conditioned upon \$440 of restitution and waiving the

PEOPLE vs. JAMES

10

1 right --

2 THE COURT: I'm sorry. You're talking very  
3 fast, which I should talk, but go ahead. What was  
4 that? Criminal sale of a controlled substance in the  
5 fifth degree, in violation of Section 220 -- go ahead.

6 MS. CROSSLEY: Section 220.31, conditioned  
7 upon \$440 of restitution and waiving the right to  
8 appeal.

9 THE COURT: Oh, thank you. All right. All  
10 right.

11 MR. CATALANO: Thank you, your Honor.

12 THE COURT: All right. Thank you.

13 (Proceedings concluded.)

14 \* \* \*

15 The foregoing is certified to be a true and accurate  
16 transcript according to my stenographic notes.

17   
18 \_\_\_\_\_  
19 Mitchell A. Jacob  
20 Official Court Reporter  
21  
22  
23  
24  
25

From: **Janaea Spires** janaeaspires4@gmail.com

Subject: **Re:**

Date: **February 10, 2024 at 4:15:41 PM**

To: **Johnny James** wenu4@icloud.com

On Fri, Jun 16, 2023 at 6:27 AM Janaea Spires <janaeaspires4@gmail.com> wrote:

I am filing a complaint of judicial misconduct on judge Wontaszek on the grounds of using coercion tactics to force defendants into using public defenders and the violation of defendant Johnnys constitutional rights, and lastly, for the abuse of authority and violation of my janaea calixte-James 1st amendment constitutional right as well.

Judge Wojtaszek informed the defendant Johnny whom is my husband If he did not accept the public defender and he chose to represent himself, in which she would have to take him through a series of questions, that if she had to do that he would not be able to get an attorney at any other given time. To be more clear in her words she stated "you will sit every hearing until this case is over without an attorney if you choose self representation." Moreover, this is a violation of Johnny James sixth amendment right and it is a form of coercion by using intimidation tactics to force the use of public defenders on the accused.

I've heard the judge off the record after removing Johnny James from the courtroom speaking negatively on him to other officers of the court whom I will be filing grievances on.

I was informed by the public defender who the judge tried to force on my husband that I should ignore the false information giving by the judge because we had bigger issues to worry about such as the charges. That is very unethical and it shows that this court knowingly and intentionally gives these defendants false information and the public defenders are clearly not working for their clients by asking you to ignore that kind of ethical issue.

I tried to have a word with my husbands public defender on 6/15/2023 after he was arrested and sentenced to 30 days in jail for contempt of court when asking about jurisdiction issues, and his so called public defender denied having a word with me and did not speak up for my husband once. The judge told me to "get out of her courtroom," which brings me to another issue. I did not violate any rules of the courtroom, nor did I disrespect or interrupt any one or any proceedings. Moreover, I have the first amendment right or access, held by the supreme court to attend any criminal proceedings as it is an explicit right of freedom of speech.

My husbands due process has also been violated. Our home was broken into by the officers of the court to pick up Johnny and we were denied a copy of any paperwork which permitted them to break in and take someone out of here against their will. The judge has still failed to provide proper paperwork regarding that.

Subject: Request for a Thorough Review of Judicial Conduct and Due Process Violations

Dear Members of the Judicial Committee,

I hope this letter finds you well. As a proud citizen of our great nation, I hold a deep reverence for the Constitution and the ideals upon which it was founded. It is in the spirit of preserving the principles of justice, fairness, and the rule of law that I humbly bring to your attention a matter of utmost concern related to the conduct of a judicial officer.

Our Constitution, with its profound commitment to the protection of individual rights and the assurance of due process, stands as a beacon of hope and justice. It is with a heavy heart that I find myself compelled to express deep reservations regarding the actions of judge Caroline Wozjtasek of the Niagara County Court who, in my experience, has displayed disregard for the rights of myself and other individuals who enter within her courtroom.

The central issue that has led me to reach out to your esteemed committee involves the *violation of my due process rights and a troubling pattern of retaliatory behavior.* Regrettably, I have witnessed instances where individuals, including myself, have encountered obstacles to their constitutional rights when appearing before this judge.

One grievous concern is the apparent disregard for the Fourth Amendment, which assures that one has the right to due process. The Fourteenth Amendment applies to state governments and contains the Equal Protection Clause and the Due Process Clause. The Due Process Clause of the Fourteenth Amendment states, "nor shall any State deprive any person of life, liberty, or property, without due process of law." This clause extends the principles of due process to actions by state governments, ensuring that individuals receive fair treatment and procedures in state-level legal proceedings. It is disheartening to observe a failure to uphold these fundamental protections, leaving individuals vulnerable to potential violations.

Furthermore, the denial of the right to file motions in court especially if the motions have merit, despite assurances to the contrary, has created an environment where individuals along with myself are left without a voice to address concerns and seek justice through proper legal channels. This has resulted in a profound erosion of trust in the fairness and impartiality of the proceedings.

I implore the Judicial Committee to consider conducting a thorough review of the conduct and actions of the aforementioned judge. This review is vital not only to address the concerns I have raised but also to restore faith in the principles upon which our judicial system is built. Our Constitution and the rights it protects are the bedrock of our democracy, and they should be upheld with unwavering dedication.

It is my sincere hope that this review process will provide clarity and transparency, ensuring that the judiciary remains a beacon of justice, fairness, and respect for individual rights. I believe in the resilience of our democratic institutions and the commitment of those who serve to uphold our Constitution.

I am deeply grateful for your attention to this matter and for your dedication to preserving the integrity of our judicial system. Together, we can reaffirm the principles that have guided our nation toward a more just and equitable future. Please feel free to contact me regarding this matter; my email is wenu4@icloud.com.

With profound respect for our Constitution and the principles it represents,

/s/Johnny Calixte-James.

**JOHNNY CALIXTE-JAMES**

Appellate



## I. (a) PLAINTIFFS

**(b) County of Residence of First Listed Plaintiff** \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

Pro Se

24C V211-

Attorneys (If Known)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 625 Drug Related Seizure	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury -	<input type="checkbox"/> of Property 21 USC 881	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 376 Qui Tam (31 USC	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 3729(a))	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> Liability	<input type="checkbox"/> 367 Health Care/			<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 150 Recovery of Overpayment	<input type="checkbox"/> 320 Assault, Libel &	<input type="checkbox"/> Pharmaceutical		<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> & Enforcement of Judgment	<input type="checkbox"/> Slander	<input type="checkbox"/> Personal Injury		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 330 Federal Employers'	<input type="checkbox"/> Product Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 152 Recovery of Defaulted	<input type="checkbox"/> Liability	<input type="checkbox"/> 368 Asbestos Personal		<input type="checkbox"/> 835 Patent - Abbreviated	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> Student Loans	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> Injury Product		<input type="checkbox"/> New Drug Application	<input type="checkbox"/> 470 Racketeer Influenced and	
<input type="checkbox"/> (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product	<input type="checkbox"/> Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> Corrupt Organizations	
<input type="checkbox"/> 153 Recovery of Overpayment	<input type="checkbox"/> Liability	<b>PERSONAL PROPERTY</b>	<b>LABOR</b>	<input type="checkbox"/> 880 Defend Trade Secrets	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards	<input type="checkbox"/> Act of 2016	<input type="checkbox"/> (15 USC 1681 or 1692)	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> Act		<input type="checkbox"/> 485 Telephone Consumer	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 380 Other Personal	<input type="checkbox"/> 720 Labor/Management	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> Protection Act	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 360 Other Personal	<input type="checkbox"/> Property Damage	<input type="checkbox"/> Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> Injury	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/	
	<input type="checkbox"/> 362 Personal Injury -	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 751 Family and Medical	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> Exchange	
	<input type="checkbox"/> Medical Malpractice		<input type="checkbox"/> Leave Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions	
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 791 Employee Retirement		<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<b>Habeas Corpus:</b>	<input type="checkbox"/> Income Security Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 895 Freedom of Information	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff	<input type="checkbox"/> Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate		<input type="checkbox"/> or Defendant)	<input type="checkbox"/> 896 Arbitration	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/	<input type="checkbox"/> Sentence		<input type="checkbox"/> 871 IRS—Third Party	<input type="checkbox"/> 899 Administrative Procedure	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> Accommodations	<input type="checkbox"/> 530 General	<b>IMMIGRATION</b>	<input type="checkbox"/> 26 USC 7609	<input type="checkbox"/> Act/Review or Appeal of	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer. w/Disabilities -	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> Agency Decision	
	<input type="checkbox"/> Employment	<b>Other:</b>	<input type="checkbox"/> 465 Other Immigration		<input type="checkbox"/> 950 Constitutionality of	
	<input type="checkbox"/> 446 Amer. w/Disabilities -	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> State Statutes	
	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> 550 Civil Rights				
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition				
		<input type="checkbox"/> 560 Civil Detainee -				
		<input type="checkbox"/> Conditions of				
		<input type="checkbox"/> Confinement				

☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**Brief description of cause:**

**JURY DEMAND:** ☐ Yes ☐ No

## DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

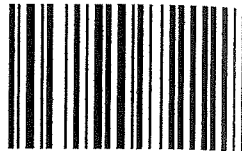
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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2 Johnny Calixte James  
2201 Pine Ave side Apt  
Niagara Falls, NY 14301

PLACE STICKER AT TOP OF EN  
OF THE RETURN ADDRESS

**CERTIFIED**



7020 1810 0000

Clerk of  
U.S. District  
District of New  
2 Niagara Squ



**Retail**



14202

U.S. POSTAGE PAID  
FCM LG ENV  
NIAGARA FALLS, NY 14301  
MAR 08, 2024

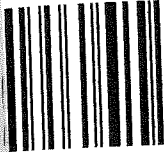
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R2305M145131-01

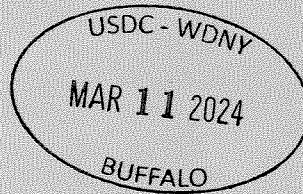
**RDC 99**

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**MAIL**



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Court

Court for the Western  
York

re, Buffalo, NY 14202